United States Court of Appeals

for the Second Circuit

APPENDIX

77-7213

United States Court of Appeals

FOR THE SECOND CIRCUIT

B
P/S

JOHN ESPOSITO,

Plaintiff-Appellee,

—against—

UNITED STATES NAVIGATION INC.

—and—

SCINDIA STEAM NAVIGATION CO. LTD.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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Relevant Docket Entries

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

73 Civil 655

JOHN ESPOSITO,

Plaintiff,

—against—

UNITED STATES NAVIGATION INC.

—and—

SCINDIA STEAM NAVIGATION CO. LTD.,

Defendants.

SCINDIA STEAM NAVIGATION CO. LTD.,

Third-Party Plaintiff,

—against—

INTERNATIONAL TERMINAL OPERATING CO. INC.,

Third-Party Defendant.

5/10/73 Complaint filed. Summons issued.

5/14/74 Filed notice of motion for an order adding Scindia Steam Navigation Co. Ltd. as a party defendant.

6/13/74 Filed memorandum and order by Mishler, Ch. J. granting motion.

Relevant Docket Entries

6/21/74	Supplemental summons issued.
7/22/74	Third-party complaint filed.
1/13/77	Before Mishler, Ch. J. trial begun on liability issue.
1/14/77	Trial continued—all sides rest on liability issue —decision reserved.
2/16/77	Filed decision and order of Mishler, Ch. J. on liability.
3/25/77	Before Mishler, Ch. J. trial begun and concluded on damages issue, decision reserved.
3/29/77	Filed decision by Mishler, Ch. J. that judgment be entered in favor of plaintiff for $116,160.
3/29/77	Judgment filed.
4/ 7/77	Amended judgment filed.
4/ 7/77	Supersedeas bond filed.
4/27/77	Filed notice of appeal by United States Navigation Inc. and Scindia Steam Navigation Co. Ltd.

Trial Transcript Excerpts

—1—

* * * * *

Jannary 13, 1977

Before:

HONORABLE JACOB MISHLER, *Chief Judge*

* * * * *

—2—

Appearances:

MESSRS. FODERA, DORFMAN & FERRARI

BY: JACK DORFMAN, ESQ.

Attorneys for Plaintiff

WILLIAM M. KIMBALL, ESQ.

Attorney for Defendants

MESSRS. ALEXANDER, ASH, SCHWARTZ & COHEN

BY: SIDNEY SCHWARTZ, ESQ.

Attorneys for Third-Party Defendant I.T.O.

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—12—

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Mr. Dorfman: At this point I would like to offer into evidence a notice to admit both the notice to the defendant, U.S. Navigation, Inc. and Scindia Steam Ltd. Company and their response.

Mr. Kimball: No objection.

* * * * *

The Clerk: So marked Plaintiff's Exhibit 1 in evidence.

* * * * *

Gerard Canterino—for Plaintiff—Direct

—14—

GERARD CANTERINO, called as a witness, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

Direct Examination by Mr. Dorfman:

Q. Mr. Canterino, what is the usual business and occupation that you are engaged in? A. Longshoreman.

Q. How long a period of time have you been a longshoreman? A. 25 years.

* * * * *

Q. And in March of 1969, by whom were you employed? A. International Terminal Operating.

Q. Co., Inc.? A. Yes, sir.

Q. And what is the nature of their business? A. They are stevedores.

Q. In what capacity were you employed by that firm at that time? A. I was a head foreman.

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Q. Briefly stated you would direct the activities to various gangs, loading and discharging cargoes? A. Yes.

Q. You were above the hatch boss? A. Yes, I was in charge of the ship.

Q. Do you know the plaintiff John Esposito? A. Yes, sir.

* * * * *

Q. Do you remember the date on which he was involved in an accident? A. Yes, I remember.

Gerard Canterino—for Plaintiff—Direct

Q. What was the date? A. It was March 18, 1969.

Q. And were you working on the pier at that time? A. Yes, I was.

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Q. Now, what berth was that? A. Pier 12, Walcott Street, Brooklyn.

* * * * *

Q. Now, had you gotten any specific instructions with regard to the discharge of that ship prior to March 18, 1969? A. Yes, sir, I did.

Q. When did you get those instructions? A. The evening before March 17th, in the evening.

—17—

Q. From whom and where did you get these instructions? A. I was in the office of my superior, Mr. Larsen, and Mr. Signorelli, really who was with the U.S. Navigation, came into the office and told us what duties we were going to perform the morning of March 18th.

Q. And what were you advised? A. I was told that a hatch on that ship, number 5 hatch, was going to be discharging bales of sisal, and they were going to be put into a Peterson barge. The ship wasn't going to go to Boston as it was predestined and they were going to load these bales into the barge so it could be put on another ship, and I had to have a gang that would do that operation tomorrow.

Q. Now, by whom did you indicate Mr. Signorelli was employed? A. Agent for U.S. Navigation at Pier 12.

Q. Do you know what function U.S. Navigation serves? A. They were the agent for the lines that we had at the pier, Scindia Lines and others.

* * * * *

—18—

Q. Now, you made reference to a barge. Was there a barge first at that pier that day? A. Yes, there was.

Q. Is there any way you can identify that barge? A. Yes, sir.

Q. What designation was there, if any? A. It was a Peterson barge, the number was P-98.

• • • • •

Q. Where was this barge in relation to the JALADHANYA that day? A. It was at the site of the pier, the

—19—

stern of the ship. It would be the stern of the ship.

Q. And could you tell us what type of decking this barge had? A. It has a wood deck.

• • • • •

Q. Now, could you very briefly describe for us the discharge operation as was on that particular day. A. Well, the discharging operation was like I said, again bales of sisal coming out of the hatch. I received a plan noting where the cargo was to come out of the hatch, and I went on board ship and I told the hatch boss that the cargo to come out was in this area of the hatch, and the men proceeded to hook up the bales of sisal. They hooked up the bales of sisal, what we call bale hooks. There are generally eight hooks to a set. They hook the bales up in the manner by hooking the strapping that holds the bale from spreading out. The men in the hull of the ship places the hood under the band at opposite ends of the bale and they gather four bales in the immediate vicinity where the hooks can reach and they are raised out of the ship by the winches. When they are raised they are

brought out onto the dock with the same winches, and they are landed at the dock. There are men on the dock

—20—

who detach the steel rings that are holding the set of hooks and they lay it down, and there is a crane waiting at that site where they are landed and the crane will pick them up and carry them to a place designated, which was the barge. At that time the crane pulls up to the edge of the pier, it stops, it centers the draft of bales in the center of the door of the barge and generally lands them down in the barge. The men are inside the barge.

Q. Before we get to that. Now, on the men that are doing the various operations that you just described, they are members of a particular gang; is that correct? A. Yes.

Q. Who is the hatch boss of that gang? A. John Canterino.

* * * * *

Q. Was John Esposito a member of the gang? A. Yes.

* * * * *

Q. Now, could you tell us what time you started to work that discharge operation that day? A. 8:00 a.m.

—21—

Q. Do you recall the time of the accident? A. The accident was 8:00 o'clock at night.

Q. And this operation had been going on continually in the manner that you just described from 8:00 o'clock in the morning until 8:00 o'clock in the evening when the accident occurred? A. Yes, it was.

Q. And to what job was Mr. Esposito assigned? A. Mr. Esposito was designated dock man, which meant he was one of six men who remained on the dock out of that gang unit.

Q. Specifically where was he working? A. Mr. Esposito was to work inside the barge.

Q. How many men were working inside the barge at that time in conjunction with Mr. Esposito? A. There were two or three men; three men.

Q. Three men in all? A. Three men, yes.

Q. And what particular job was Mr. Esposito doing? A. Mr. Esposito was to help guide the bales coming into the door unless they were unruly, and to land the bales and unhook the bales at that site; and also after the crane had left and had landed the bales, Mr. Esposito with his

—22—

partner and the machine driver or the hilo driver that was inside the barge would raise up a bale, and the men would put a chock or a block of wood underneath the bales so they could be raised by a hilo.

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Q. Now, could you tell us what you observed upon returning to the scene of the accident? A. When I got back to where the accident occurred I noticed a large hole in the deck of the ship and—like debris about there, and it looked like dry rot from wood.

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Q. You had occasion to be aboard that barge during the day, did you not, while these activities were going on? A. Yes.

Q. And did you have occasion to observe the condition of the deck of the barge when you first saw it that morning? A. Yes, I did.

* * * * *

Q. How did you find the condition to be? A. Well, I seen in the lighter it was old and the flooring was—there are old boards and there were some replaced boards.

Q. Were there any defects? A. Not that I could see.

—30—

Q. Were there any conditions of disrepair that you saw? A. No, there was none.

Q. Now, I show you Plaintiff's Exhibit 3 in evidence and ask you to tell us what that reflects? A. This is the opening of the barge we were working on that day and it showed the deck and the door of the area where the bales were being landed.

Q. Could you pinpoint where the opening is in the flooring where Mr. Esposito had fallen? A. It's about two and a half feet from the doorway from the wall of the bulkhead.

The Court: Is it shown on the photograph?
The Witness: Yes, sir.
The Court: Circle it, please.

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Q. Now, did you have an opportunity to look at that hole in the floor? A. Yes, I did.

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Gerard Canterino—for Plaintiff—Cross

—32—

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Q. And what did you observe?

Mr. Schwartz: Talking about before or after?

Q. After; everything is after. A. I observed the hole in the floor and I noticed a lot of rotted wood at the area.

Q. Now, what do you mean by rotted wood? A. Shreds of woods, shreds of wood—

The Court: Disintegrated?

The Witness: Disintegrated.

Q. I show you another photograph, Plaintiff's Exhibit 3 in evidence and ask you if this is another closeup of the hole in the floor? A. Yes, it is.

Q. Can you tell us what that picture depicts? A. It shows the disintegrated wood that I was just talking about. There is a man with some of it in his hand and it shows a few particles of the bales we are loading.

Q. I show you Plaintiff's Exhibit 3-B and ask you if this is the same hole? A. Yes, it is.

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Cross-Examination by Mr. Kimball:

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Q. You mentioned that U.S. Navigation were agents for a number of different ship owners who used the facilities of Pier 12; is that correct? A. Yes, sir.

Gerard Canterino—for Plaintiff—Cross

Q. Can you give me the names of at least some of those ship owners for whom U.S. Navigation were agents? A. Yes, I can.

Q. Please do so. A. There were United Philippine Line; there was the Ivarian Lines.

Q. I-v-a-r-a-n; is that your spelling? A. I-v-a-r-i-a-n or a-n—

Q. We have the Philippines, Ivarian? A. India.

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Q. Now, did this barge have any power at all? A. None of its own.

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Q. Did the barge have a captain? A. The barge had

—40—

an attendant, yes.

Q. Sometimes called a barge captain out of a matter of courtesy more than anything else; right? A. We don't call him "Hey." We call him Captain.

* * * * *

Q. In any event, would it be fair to say that somebody came with the barge? A. Yes.

Q. Called a captain or an attendant? A. Yes.

Q. And he was someone who was in the employ of whoever owned the barge? A. Yes.

Q. And he had certain duties to perform in respect of the barge, whether he did it or not is something else again, but he was supposed to do certain things in respect to the barge on behalf of the owner of the barge; is that correct? A. Yes.

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Q. Of course, as head foreman, you were generally familiar with the Safety and Health Regulations for Longshoring; is that a fair statement to say? A. It's fair.

Q. And quite apart from the regulations, because I believe this may have been long before the regulations, were you generally familiar with a requirement on the waterfront, and particularly by your safety-conscious employer, ITO, that if you particularly saw anything which appeared to you to be hazardous to the men it was your responsibility to order the work stopped until that condition was straightened out? A. Yes.

Q. Now, at any time on the date of this accident while you were aboard that barge, about how many times would you say you were aboard that barge that day? A. Fifteen, seventeen times.

Q. During any of those fifteen or seventeen times, did you see any condition in respect of the decking of the barge, the walking and working surfaces of the barge

—45—

which caused you to even consider the possibility of ordering the work stopped because the condition appeared to you to be hazardous? A. No, I didn't see anything.

Q. Do you recall the longshoremen's strike here in the Port of New York which started the end of '68 and continued until February of '69? A. I recall the longshoreman strike; yes.

• • • • •

Q. Now, tell us, please, what effect, if any, that strike had on any situation of congestion at Pier 12? A. Well,

there were ships waiting to come into Pier 12 to discharge, and there was quite a few ships and there was a lot of cargo at the pier which had to be loaded and a lot of cargo on the ships to be unloaded. Congestion—yes, it was congestion, right.

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Q. You mentioned some place in your testimony that a Mr. Signarelli (phonetic) whom I believe you said as far as you know was an agent at the pier for U.S. Navigation. He mentioned something about Boston? A. Yes.

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Q. What did Signarelli have to say by way of explaining why Boston was significant? A. Mr. Signarelli said there may be a strike there and if the ship went up to Boston that the ship may be caught in the strike and be forced to remain in Boston.

Q. So in other words, the point of Mr. Signarelli's remarks, as you understood them, were to the effect that there either was or might be some labor disturbance in Boston which might delay the ship and therefore they would take this Boston cargo off the ship and put it on the lighter. A. Yes.

—48—

Q. Do you know whether the lighter was moved a day or so later so that the cargo would be taken off the lighter and put in some other place? A. Later than what?

Q. A day or so after the 18th. A. After we finished loading it, yes.

Q. The lighter was— A. She was taken away.

Q. By tugs, no doubt, since she had no motor power? A. Tugboats took it away.

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Redirect Examination by Mr. Dorfman:

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Q. Now, you also testified in response to a question asked of you by Mr. Kimball, the fact that some time after

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the 18th this barge was towed away by a tug to go some place; is that correct? A. Yes.

Q. Do you know where it was taken? A. It was going to another Scindia Line ship, another area, another pier.

Q. How did you learn that? A. Mr. Signarelli informed me.

Q. Incidentally, you indicated that Mr. Signarelli was the agent for U.S. Navigation Lines. What do you mean by the agent? Was he in their employ or was he an independent agent? A. Mr. Signarelli was a representative of the U.S. Navigation, he worked for U.S. Navigation.

Q. He was in their employ? A. Right. I guess he was the pier manager of everything, because we service all the U.S. Navigation ships, most of them.

Q. Was he always on the site when anything involving U.S. Navigation or one of the other lines for which U.S. Navigation was agent, such as Scindia, Ivarian, was he also on the site at the time the ships were being loaded and discharged? A. Mr. Signarelli was always at the pier.

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—54—

Q. You talked about this man who came along with the barge as an attendant or "captain," tell us specifically what his function was. A. Well, what he does when a tugboat comes alongside a barge you get the line from the tugboat and tie them up to his barge, and then the tugboat will take the barge away. When the tugboat is finished he'll take the lines off his ship and put them back to the tugboat and he will tie up to the pier, throw his lines out to the pier and tie up there and for this type of cargo, for this specific day that we were loading you very rarely see them, but on the other cargoes the attendant will count the company bags that are put on board.

Q. Would you say that this man is really a laborer? A. Yes.

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FRANK DEMONTE, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct Examination by Mr. Dorfman:

Q. Mr. Demonte, you are a longshoreman, are you not? A. Yes, sir.

Q. How long have you been a longshoreman? A. For about 24 years.

Q. And you know Mr. Esposito, do you not? A. Yes, sir.

Frank Demonte—for Plaintiff—Direct

Q. Were you working with Mr. Esposito on March 18, 1969? A. Right.

Q. And was he involved in an accident on that day? A. Yes, sir.

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Q. On that day what gang were you assigned? A. John Canterino.

Q. He was your hatch boss? A. Yes, sir.

Q. What work were you assigned to do that day? A. Machine driver.

Q. Is that a hi-lo driver? A. Machine driver, hi-lo driver.

Q. Where were you working that day? A. I used to work on the barge, barge lighter, either way. I go no English school, speak louder.

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Q. Did you start to work first thing that morning? A. We started 8:00 o'clock in the morning.

Q. Were you working continually that day until the accident happened? A. Continually beside the lunch hour.

* * * * *

Q. When you got aboard that lighter, did you have occasion to look at the floor of the lighter? A. Well, I went in before the machine had been down and I give a first look and I can't go check everything.

Q. But in any event did you see anything that was defective? A. No.

Q. An opening, a hole? A. No, nothing.

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—59—

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Q. Could you tell us what happened at or about the time that Mr. Esposito was injured? A. Well, I was down there setting bales and the other guys—

Q. Go ahead. A. I heard a call, "ow." I turned around, I see Mr. Esposito lay on the floor. I shut the machine off and went over.

Q. And what did you see when you went over to Mr. Esposito? A. I see the foot inside of the hole.

Q. How far into the hole was the foot? A. Up to the knee.

Q. And what leg was that, if you remember? A. Right side leg.

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—61—

Q. Did you look at the floor or the deck where the accident happened after Mr. Esposito was taken away? A. Yes.

Q. Now, I show you Plaintiff's Exhibit 3-F in evidence and ask you whether this picture shows the place where Mr. Esposito fell. A. Yes.

Q. And you see a symbol. Is that the hole through which his leg was when you saw him? A. Yes, this is the opening on the lighter facing the garage.

Q. I show you another picture which is a closeup of the hole and ask you if that also shows the hole where he fell? A. Yes, same hole but a little bigger.

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Frank Demonte—for Plaintiff—Cross

—62—

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Q. Now, before this accident happened, what was the condition of the deck? A. The floor, it looked all right to work.

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Cross-Examination by Mr. Kimball:

Q. Mr. Demonte, when you were hired that morning, you were hired to drive this machine; is that right? A. We come in with the gang.

Q. Eventually they said to you, they said you are going to drive the machine? A. Right.

Q. And the machine weighed what, about 3,000 pounds maybe? A. Three, thirty-five, depends.

Q. Now, you didn't want, while you were driving that machine, you didn't want to go through the deck with it, did you? A. Oh, no.

Q. So when you were looking around before the work started you had in mind you were going to be driving a

—64—

heavy machine? A. Yes, sir.

Q. But still, as best you could see everything looked okay; is that right? A. Yes.

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Q. In other words, you didn't think if you drove your machine around that deck that you were going to go through, you didn't think that? A. No.

* * * * *

John Esposito—for Plaintiff—Direct

—65—

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JOHN ESPOSITO, the Plaintiff herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct Examination by Mr. Dorfman:

Q. You are the plaintiff in this action, are you not? A. Yes, sir.

Q. And does this action relate to an accident in which you were involved on March 18, 1969? A. Yes.

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Q. What time did you report to work that day? A. Eight in the morning.

Q. Were you assigned to work a particular ship? A. Yes, sir.

Q. Do you know the name of the ship? A. Jaladhanya.

Q. And it was your gang that was assigned this particular ship; is that correct? A. Yes, sir.

—67—

Q. What job did you do as a member of that particular gang? A. I worked on the barge as a longshoreman to unhook these bales. As the bales were coming off the JALADHANYA.

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Q. When you boarded the barge that morning, did you have occasion to observe the condition of the deck of the barge? A. Well, we walk in, we look. We see everything

—69—

is all right and like we just don't inspect if anything is wrong with it, but we just go in to work and that's it, expecting that everything is suitable for work.

Q. Did you look around that morning? A. Yes, sir.

Q. Did you see any defects on the floor of the barge? A. No, sir.

Q. Could you describe what you saw as the deck of the barge appeared to you that morning? A. Well, there was some replacement boards and some worn boards and some boards that looked like a regular floor, that's all.

Q. Now, when you talk about worn boards, what are you referring to? Was there a depression? Was there a hole or what? A. No holes, just like a regular floor you walk on.

Q. And did you continue to do the work that you just described from the time you boarded the barge at 8:00 o'clock until the accident occurred? A. Yes, sir.

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Q. Now, could you tell us what you were doing just moments before the accident occurred? A. Well, I was going over to unhook the bale and the floor gave in and I fell right through it up to my groin.

Q. What point of your body fell into this opening? A. My right leg way up to my groin.

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Cross-Examination by Mr. Kimball:

Q. I want you to tell me a little bit more, Mr. Esposito about the way that the work was being performed that day. You testified that these bales of what was it, hemp or sisal?

—74—

A. Hemp.

Q. These bales of hemp came off the ship and were put on to the dock; is that correct? A. Yes, sir.

Q. And then they were picked up from the dock with a crane and brought to the barge or lighter, is that correct? A. Yes, sir.

Q. And then the crane put the bales through those openings, those doors into the lighter and deposited near the doors? A. Right in the center.

Q. But what I'm interested in is this. Did the crane deposit the bales inside the lighter itself or on the dock alongside of the lighter? A. Inside the lighter.

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Q. And then the bales were picked up by the hi-lo and driven to the proper stowage place inside the lighter? A. Yes, after we put the chock underneath.

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Q. Now, this barge was on the same side of the pier as the ship? A. Same side, yes, sir.

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* * * give us your best recollection, was the barge at the bow end or at the stern end, as best you now remember? A. The ship is in the front, all the way up on berth 1, all the way up in the front and right in back of the ship is where the barge was tied, figure around 20, 25 feet away from the ship, I don't know exactly how much. It was right in back, this was the barge and this was the ship and this was the gate on Walcott Street.

—77—

Q. Now, the barge was tied up to the pier; is that correct? A. Yes, sir.

* * * * *

Q. Was 25 feet, the open distance between the ship and the barge? A. And the barge, something like—I really don't know what the distance was. I'm only guessing at that. It could have been even 15 feet, I really don't know.

Q. But there was some open space. In other words, the barge wasn't hard up against the ship? A. No.

Q. There was some distance between the two? A. Yes.

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Q. So you didn't expect this accident was going to happen, did you? A. No, sir.

Q. At the time before the accident, did you have pretty good eyesight? A. Yes, sir.

Q. And the lighting conditions were pretty good? A. And the lighting in the lighter, yes, sir.

Q. In other words, you could see the conditions on the floor? A. It was good lighting.

Q. And the floor at the place where you eventually stepped through looked okay to you? A. Yes, sir.

Q. Otherwise you never would have stepped there? A. Never.

Q. Would it be fair to say in the course of performing

—79—

your work between 8:00 o'clock in the morning and 8:00 at night when the accident happened, you walked over that same place several times doing your job? A. Definitely.

Q. And it never gave way underneath you? A. No, sir.

* * * * *

Cross-Examination by Mr. Schwartz:

Q. Mr. Esposito, the fact of the matter is that you walked over that very spot where your accident eventually took place at least 20 or 30 times? A. Even more.

Q. It looked all right to you? A. Yes, sir.

* * * * *

John Esposito—for Plaintiff—Cross

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Mr. Kimball: * * * The next thing or things I would like your Honor to judicially notice is that there was indeed a longshoremen's strike in New York from December 20, 1968 until February 15, 1969 * * *.

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The Court: If it's true I'll take judicial notice of it.

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Mr. Kimball: And lastly, if your Honor pleases, I would like you to judicially notice that at least at the time of the plaintiff's accident, which was on March 18, 1969, the labor dispute in Boston had not been settled and the Boston strike indeed was still in effect until March 28th * * *.

* * * * *

The Court: If it's so I'll take judicial notice of it. I assume this only explains why they were transferring the bales of hemp from the Indian named ship to another.

Mr. Kimball: Your Honor is quite correct.

* * * * *

Hubert Reel—for Defendants—Direct

—1—

* * * * *

January 14, 1977

* * * * *

Before:

HONORABLE JACOB MISHLER, *Chief Judge*

* * * * *

—2—

Same Appearances:

* * * * *

—3—

* * * * *

HUBERT REEL, called as a witness, having been duly sworn by the Clerk of the Court, testified as follows:

* * * * *

Direct Examination by Mr. Kimball:

* * * * *

Q. What is your occupation? A. Captain, lighter.

Q. For how long has that been your occupation, about? A. Off and on, I'd say about eight or nine years.

* * * * *

Q. In March of 1969, by whom were you employed?

—4—

A. Mr. Peterson.

Q. Is that the Peterson Lighterage & Towing Company? A. Yes.

Q. For about how long were you employed by Peterson? A. Off and on, approximately three years.

Q. Were you employed by Peterson on the same lighter or different lighters? A. On different lighters.

Hubert Reel—for Defendants—Direct

Q. On March 18, 1969, were you employed by Peterson as captain of Lighter P-98, which was at Port Authority, Pier 12, in Brooklyn? A. I was.

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Q. I want to know was there a hole in the deck that morning when the men began working. A. I didn't observe any hole, sir, except little ones like this. Most of the deck is, itself, was covered up with plyboard, three-quarter plyboard in there.

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The Court: Did you ever see a round hole like this, that's on the photograph?

—8—

The Witness: I wouldn't call that a round one. It looks like oblong to me.

The Court: Well, an oblong hole. Did you ever see one like that?

The Witness: I have. I wouldn't say it was the same dimension, but I have seen them.

The Court: Well, would you point to the new board that you say replaced the rotted wood? Will you point out that on those photographs.

The Witness: This is reinforced, right in front of the doorway where the HiLo operates.

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Q. Were your duties as a captain of Lighter P-98 in general the same as your duties as captain of the other Peterson lighters on which you worked? A. Yes.

Q. Will you please tell us what was the general nature of your duties as captain of a Peterson lighter, including P-98? A. Well, the first duty was to try to keep her afloat, sir. The shell of her was in such bad condition till she was like most of the time, on the stern we had two belly pumps and up the stern, the suction lines run right through each port and starboard hatch, so that was the one that was No. 1.

Q. No. 1 was to pump? A. That's right. So, the second, you observe whether there was any damage throughout the night when you walk aboard in the morning.

Q. Damage to what, sir? A. Damage done to the barge. In other words, if they hit the bulkhead or anything, and secure the lines and check the cargo coming in and so forth. That's about it.

Q. As captain, did you have any duties in respect of

—10—

cleaning or maintaining these lighters? A. That was after the discharging. This particular time she was loading.

Q. And you say "checked the lines." You mean by that, of course, mooring lines? A. Well, in other words, we were in that particular area. You got a lot of traffic there through, right across from where the Coast Guard is today and the lines, the rising and the falling of the tides, you have to keep checking them, pulling them in.

Q. My point, sir, is when you say "lines," you mean mooring lines; is that correct? A. That's right, correct.

Q. The lines that secured the lighter to the dock? A. Right.

Q. And you're telling us, by virtue of the rise and fall of the tides and passing traffic, you would have to adjust those from time to time? A. Yes.

Q. And that was one of the jobs of a captain? A. That was one of my jobs.

Q. Did you have any duties as captain, and mind you, I'm not talking specifically now on this date with respect

—11—

to P-98, but I'm talking with respect to your general duties on all of these lighters. Did you have any general duties with respect to maintaining the trim of the lighter during loading and unloading? A. Oh, yes, yes.

Q. Tell us what your duties with respect to that are and how you did your duties.

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A. You watch the trim of her at all times. You don't have to be in the freight house to do that, sir. You can sit in your cabin and do that.

Q. If you observed that the trim was, in your judgment, unsatisfactory, what, if anything, was your job to do about it? A. All right, you converse with the checker, the checker converses with the operations of the machinery, which the HiLo operator tells him to put it here or put it there, and relay it from one side to the other to equalize the buoyancy of it.

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* * * * *

Q. Did you have any duties as captain of lighters with respect to the safety of the cargo aboard the lighters, or to avoid pilferage or fire or anything of that nature? A. Yes, sir. There is an inspection and I think most of the cargo during that period of time was dessolated hemp, and there is no smoking. That's a Coast Guard ruling, that's nothing new in any boat operation.

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Q. Well, did you have any responsibility as captain to see to it that nobody did smoke? A. I did.

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* * * * *

Q. Captain, in respect of pilferable cargo, while serving as a lighter captain for Peterson, did you have any responsibilities? A. Sure.

Q. What were they? A. Well, if you're loading coffee, you had the responsibility to a correct count. You had the responsibility that there was no holes in the bags when they were either stored on pallets or they were even what they call deck cargo. When the count was given in and the checker verified your count and you accepted his count, then the doors was closed and you proceeded to go sign out and that was it.

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Q. Now, mention has been made during your testimony about repairs to these Peterson lighters. By whom were

the repairs made? A. Mr. Peterson, up around Weehawken, they had a repair yard. I never was in the yard at all. I don't know, the barges would be discharged, and you'd make the complaints and you assumed it was corrected.

Q. In other words, to the extent that the lighters were repaired, that work was done by Peterson in its yard; is that correct? A. That's right, until I could help to support, like picking up a piece of board from the docks and put it in there.

Q. Well, how about such things as replacements of board in the wood decks of these lighters? Was that the sort of work which was done in the Peterson yard? A. They had calkers, big wooden barges, they had calkers up there to put in the calking material, such as flax and tar, and they

—18—

also had carpenters, what they call ship carpenters, to repair the flooring.

* * * * *

Q. And that's the sort of work which was done at the Peterson repair yard? A. That's correct.

* * * * *

Q. In other words, while working as captain of Peterson lighters, you took your orders only from Peterson? A. That's right, sir.

Q. And you got your pay solely from Peterson? A.

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Yes, sir.

Q. Did you report to the Peterson office on a regular basis? A. I certainly did.

* * * * *

Q. You'd call up every day to tell them how far the work had gone up to that moment; is that correct? A. That's right, sir.

Q. And to receive from them any orders that they might have for you with respect to the movement of the lighter? A. That's right.

Q. And to report to them any damage which may have happened or anything else of an unusual nature with respect to the lighter; isn't that right? A. That's right, sir.

Q. Now, in March of 1969, did Peterson have two tugs

—20—

which were used by them to move these lighters from place to place, as might be required? A. Yes, I think McAllister did that job.

Q. Did Peterson have those tugs? A. Not as I know of. They had a small one. That's the only one I know.

Q. But you think McAllister— A. It was, I think they had a contract towage on it. It was done at nighttime, sir.

* * * * *

Q. In other words, you did not live on P-98? A. No, sir.

Q. There were no sleeping or no overnight sleeping facilities on that lighter; is that correct? A. No, sir.

Q. So yours was a daytime job? A. That's right.

Q. About what time did you have to go to work? A. I had to be there at eight o'clock, sir.

Q. About how late did you work? A. That varies; that varies.

Q. Would you stay there as long as cargo operations

—21—

were going on? A. That's right, sir. I was responsible for the closing of the doors.

Hubert Reel—for Defendants—Cross

Q. The doors of the lighter? A. That's right, sir.

* * * * *

Cross-Examination by Mr. Schwartz:

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Q. And when you say a lighter, this is really a covered barge? A. That's right.

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Cross-Examination by Mr. Dorfman:

Q. Mr. Reel, you indicated that you are a relief man; is that right? A. I was a relief man at that time, sir.

Q. And how is that different from somebody who is not a relief man? A. Well, if you are assigned to a boat, it's just like you've got a rental car every day or you don't rent a car every day.

Q. Are you saying, then, there are some men employed by Peterson who were assigned to a particular barge, and they handled that barge each and every day? A. That's right, sir.

—27—

Q. And then you, as a relief man, would tend the barge where someone did not appear on a particular day? A. Right.

Q. You went from barge to barge as the need required? A. Right.

Q. Now, you're really an attendant, are you not? A. You can put it in that classification.

Q. So when Mr. Kimball called you a captain, you have no papers? A. I haven't? Would you like to see them, sir?

Q. Well, I mean were you ever a captain of a ship? A. No, but I was second mate, sir.

Q. All right, now, the papers I'm talking about are captain papers; do you have captain papers? A. Ordinarily this job required an AB, and able bodied seaman papers.

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Q. Let me ask you about counting the coffee, for example; if that was being stored aboard a barge, you would be there solely to count coffee at that time; is that correct? A. That's right. This wasn't coffee, sir.

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Q. When they said count the coffee, did you just count the bags and make a note? A. I checked them and received them in order, one draft had 20 bags on it, I wrote 20. If one draft had 13 bags, I wrote down 13.

Q. Now on what did you make this notation? A. Those notations, this particular boat in that period of time they took what they call pier papers; you took what are called a receipt and you delivered it to the ship, this particular material was going from pier 12 around to what they call the grain docks and discharged aboard an Indian ship. I don't recall the name of that.

Q. So there was a counter, the count went to the ship; is that right? A. That's right, this was in such bulk, I mean this was counted being stored in the hall.

Q. In effect then, you were actually making the count to make sure for purposes of the shipping company, that the right number was going on aboard that barge; is that correct? A. Yes, sir.

—31—

Q. You also indicated that particular barge, P-98, was in pretty bad shape, it was leaking I think you said; is that correct? A. I said she was— Well, I wouldn't put it up to par, sir, not when you got to patch leaks and they used two pumps to keep her afloat.

* * * * *

Q. And there were holes in the deck as such; is that correct? A. In various areas, small holes.

Q. Incidentally, do you know the name Signorelli. A. Signorelli, he was the Superintendent at the pier.

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* * * * *

Q. And did he ever have occasion to come aboard any of the barges on which you were working, just to look around? A. Not the one I was in, sir.

—33—

Q. You mean he did not do that? A. No, sir.

* * * * *

Q. Would you say your primary duties, your major duties were to tie the barge fast to the pier when the ship was berthed and to also untie the lines when the ship, barge is being moved? A. If the line was slack we secure them,

bring them taut and secure them, and as it falls and rising, you have this tide procedure all throughout the day.

So, when you leave at night time if the tide is high you leave enough slack so she'll ride to the bottom with the tide.

Q. Now when this barge was towed from Pier 12 after it was fully loaded, firstly, do you know where that was towed to?

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A. This particular load was going to the Indian ship which was at the grain dock. Now, that's at the foot at Columbia Street over here.

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Q. Were you on the barge when it was moved from Pier 12 to the other pier? A. I never rode a barge. I don't do it today, unless it's at lunch hour and they needed the cargo at the present time. It wasn't required and it still isn't required today.

Q. So there is nobody aboard the barge at such time as that barge is being moved from place to place; is that correct? A. She was in the safety of the tug from the time she leaves the dock till it approaches wherever she may be going.

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Q. Mr. Reel, you didn't have anyone under you who you were supervising; is that correct? A. Except for the long-

shoreman. I mean, if it wasn't let's say loading properly, then you try to encourage them to.

Q. And if they didn't listen to you, who would you complain to? A. Then you go to the dock boss.

* * * * *

Plaintiff's Exhibit 1

SIRS:

PLEASE TAKE NOTICE, that plaintiff requests the defendants to admit the truth of the matters of fact hereinafter set forth pursuant to Rule 36 of the Federal Rules of Civil Procedure:

1. That the defendant, UNITED STATES NAVIGATION, INC., (U.S. NAV.), made arrangements for the discharging of cargo aboard the M/S "JALADHANYA", Voyage 32, upon its arrival in the Port of New York on or about March 18, 1969.

2. That the defendant, U.S. NAV., was acting as agent for and on behalf of the defendant, SCINDIA STEAM NAVIGATION COMPANY, LTD. (SCINDIA).

3. That discharged cargo aboard the M/S "JALADHANYA", destined for the Port of Boston, was to be transferred to the M/S "JALAGOPAL", for shipment to Boston.

4. That the M/S "JALAGOPAL" was owned by the defendant, SCINDIA.

5. That the M/S "JALADHANYA" was owned by the defendant, SCINDIA.

6. That as the cargo was discharged from the M/S "JALADHANYA", it was stowed aboard barge P-98.

7. That the cargo discharged from the M/S "JALADHANYA" and stowed aboard barge P-98 was thereafter transferred to the M/S "JALAGOPAL".

Plaintiff's Exhibit 1

8. That an invoice, annexed hereto and marked Exhibit "A", dated March 31, 1969, billed to the S/S Rio DiJaniero, and/or Owners Ivaran Lines and United States Navigation Co., relates, among other things, to the chartering of Barge designated "P-98" for the period February 27, 1969 to March 29, 1969.

9. That an invoice, annexed hereto and marked Exhibit "B", dated June 27, 1969, billed by the defendant, U.S. NAV., to M/S "JALADHANYA" Voy. 32, is for the use of Barge P-98 for the period March 18, 1969 to March 21, 1969, by the M/S "JALADHANYA".

Dated: Brooklyn, New York
September 8, 1975

Yours, etc.,

FODERA, DORFMAN & FERRARI
Attorneys for Plaintiff

DAY PHONES:
944-4077
943-2442

UNION 9-0027
POPLAR 8-4932

PETTERSON
LIGHTERAGE & TOWING CORP.
33 RECTOR STREET
NEW YORK, N. Y. 10006

HEAVY LIFT SELF-PROPELLED LIGHTERS
HOIST UP TO 25 NET TONS
TUGS & SELF PROPELLED CARGO VESSELS

DERRICK LIGHTERS
COVERED BARGES
SCOWS UP TO 600 TONS CAPACITY

March 31st, 1969

S/S RIO DE JANEIRO, and/or Owners,
Ivaran Lines,
United States Navigation Co.
17 Battery Place, New York, N. Y. 10004

INVOICE No. 4609A

		S/S RIO DE JANEIRO, 12 Bklyn	
		CHARTER of Barge P-98 2/27 to 3/29 31 das.@ $80.	2480 00
2	27	CREAL - Towing LDD to Pier 12, Bklyn.	75 00
3	12	MARY J- " 12 Bklyn. to Pier 9, Erie R.R.	75 00
3	17	VICTOR- " 9 Hob. to 12 Bklyn.	75 00
3	28	" " Columbia St. to 12 Bklyn.	75 00
3	30	MARY J- Return tow to yard	75 00
			2855 00
3	1	CAPT. OVERTIME- Sat. Diff.	12 05
3	8	Sat. Diff. & 5-6 PM	16 57
3	18	5-9PM 4 hrs. @ $4.52	18 08
3	22	Sat. Diff-Unldg. Columbia St.	12 05
3	23	Sun. Diff. " "	12 05
3	26	Ldg. 5-9PM 4 hrs. @ $4.52	18 08
3	27	Unldg. 5-7 PM 2 hrs. @ $4.52	9 04
3	29	Sat. Diff.	12 05
		45% Ins., etc.	49 49
		~~5% (NYS & NYC) Sales tax on Charter + Insur wages~~	
			3014 46

ACCOUNT NO. 478

Paid 4/15/69
Return to F.C.

EXHIBIT "A"

Plaintiff's Exhibit 1

NEW YORK, N. Y. 10004 6/27, 19 69

M/S "JALADHANTA" Voy. 32

TO UNITED STATES NAVIGATION CO., INC.

17 BATTERY PLACE

To	proportion of attached Patterson Lighterage & Towing Corp. billings applicable to above vessel per Mr. Signorelli, Pier Superintendent.			
	Barge JUDITH 3/13 to 3/25 13 days at $80.00			1,040 00
	Port of New York Wharfage on Barge JUDITH 3/21			2 00
	Towing from Pier 9 to Pier 12 Brooklyn			
	Towing from Pier 12 to Columbia Str. Brkl.			
	Barge P 98 3/18 to 3/21 4 days at $80.00			320.00
	Towing Pier 9 Erie to Pier 12 Brkl.			75 00
	Plus Captains Overtime on all days, on all barges as shown above			
	3/18 P 98	18 08		
	3/19 JUDITH	33 90		
	3/14 "	4.52		
	3/15 "	12 05		
	3/22 "	12 05		
	3/23 "	12 05		
	45% Insurance etc.	41 69		134 24
				$1,573 24

AC-16p

EXHIBIT "B"

Statement in Reply to Request to Admit

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

John G. Ingram being duly sworn deposes and says that he is an associate of Burlingham Underwood and Lord attorneys for defendants and third-party plaintiff, and makes this statement pursuant to Rule 36 of the F.R.C.P. and in response to plaintiff's request to admit received on September 9, 1975.

1. Defendants and third-party plaintiff admit the truth of plaintiff's requests 1 thru 9.

Dated: New York, New York
September 18, 1975

/s/ JOHN G. INGRAM
John G. Ingram

Sworn to before me this
17th day of September, 1975.

/s/ GERALDINE J. MCKENNA
Notary Public

Opinion on Liability

February 16, 1977

MISHLER, CH. J.

This is an action for personal injuries by a longshoreman employed by International Terminal Operating Co. Inc. ("ITO"), against Scindia Steam Navigation Company, Ltd. ("Scindia"), the owner of cargo vessel M/V "Jaladhanya" and United States Navigation, Inc. ("Navigation"), Scindia's agent. Esposito was injured aboard a barge on March 18, 1969, while engaged in stowing bales of hemp discharged from the #5 hatch of the Jaladhanya onto the deck of the barge. Defendant—third-party plaintiff—seeks indemnity from ITO. The trial on the issue of liability was conducted by the court without a jury. The court finds as follows:

The M/V Jaladhanya, owned by Scindia, arrived at Pier 12 in Brooklyn, New York, on March 13, 1969, with a cargo of hemp and similar merchandise. Its ultimate destination was Boston. Because of a strike of longshoremen in Boston Harbor, defendants decided to transfer the cargo to a sister cargo vessel, the M/V "Jalagopal", which was berthed at Pier 9. Navigation had a barge, "P-98", for an indefinite term since February 29, 1969, which was owned by Petterson Lighterage and Towing Corp.[1] The

[1] Plaintiff commenced an action against Petterson in this court on March 25, 1970 (70 C 362). Petterson filed a petition in bankruptcy on May 11, 1970, in the United States District Court for the Southern District of New York. Plaintiff thereupon abandoned the claim against Petterson. The case was dismissed for failure to appear on December 11, 1973. The complaint in the case at bar was filed on May 10, 1973.

barge was without motor power. The oral charter was on a day-to-day basis at $80 per day, and included the services of Hubert E. Reel, who was described as the "captain" of the barge. During this period, the barge and its "captain" were under the direct control of Navigation. Reel's duties with relation to the barge consisted of securing the lines and acting as a watchman over its cargo. When directed by the ship's personnel, he made a check of the cargo and reported it back.

On the morning of March 18, 1969, Navigation assigned barge "P-98" to the service of the Jaladhanya. The barge was towed by tug to the stern of the Jaladhanya. Reel was aboard the barge during the towing operation. The deck of the barge was a patchwork, consisting of boards of various sizes and dimensions placed over supporting beams. The shell leaked and required bilge pumps to keep it afloat.

ITO commenced discharging the cargo from the Jaladhanya at about 8:00 A. M., soon after the barge was secured. The ship's winch removed the bales of hemp from the #5 hatch and placed them on the pier. A crane then moved the cargo from the pier onto the barge. Plaintiff and another longshoreman aboard the barge removed the bridle from the draft, and a hilo operator then stowed the bales of hemp. At about 8:00 P. M. on March 18, 1969, plaintiff walked toward a draft that had landed on the deck of the barge for the purpose of removing the bridle. Boards had been substituted for the original planking of the deck in and about the area where the draft had landed. The deck in that area appeared to be safe and able to support the weight of the longshoremen and cargo. As

plaintiff stepped toward the draft, the board beneath him yielded and his right foot was thrust through the deck to his groin.

Defendant Navigation answers that the barge charter was not a demise; if indeed it was, then "the sublet to Scindia was not a demise" (Trial brief, p. 5), and a bareboat charterer is not liable for personal injuries arising from unseaworthiness due to a latent defect existing before the demise (Trial brief, p. 5).

"To create a demise the owner of the vessel must completely and exclusively relinquish possession, command and navigation thereof to the demisee," *Guzman* v. *Pichirilo*, 369 U.S. 698, 699, 82 S.Ct. 1095, 1096 (1962). Petterson relinquished possession and control of the barge and placed Reel under Navigation's command. Charters of barges with "captains" in the employ of the owner are generally held to be demises.[2]

Navigation's argument that the "sublet" was not a demise rests on the relationship between Navigation and Scindia with reference to the barge. The original hiring

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[2] In *Hastorf* v. *F.R. Long-W.G. Broadhurst Co.*, 239 Fed. 852 (2d Cir. 1917), an oral charter for a dumper-scow including a man to take care of her at $20 per day was held to be a demise. In *The Willie*, 231 Fed. 865, 867 (2d Cir. 1916), the court held: "Charterers of scows in this harbor, without motive power of their own and subject to orders and control of charterers, are treated as demises, even though the owner keeps a man aboard, called captain by courtesy," citing *Monk* v. *Cornell Steamboard Co.*, 198 Fed. 472, 117 C.C.A. 232. In *Aird* v. *Weyerhaeuser S.S. Co.*, 169 F.2d 606 (3d Cir. 1948), *cert. denied*, 337 U.S. 959, 69 S. Ct. 1521 (1949), where a barge was brought to defendants dock and left in defendants possession for the purpose of loading it with pipe, the court held defendants to be the demisee of the barge.

of the barge was not for Scindia's account. Navigation acted independently in the hiring. It was the demise charterer of the barge. On March 18, when it assigned the barge to the service of the Jaladhanya it acted as agent for Scindia. Navigation did not surrender control of the barge. The services were performed pursuant to Navigation's direction and under its control. The claim against Scindia is based on the traditional concept of respondeat superior. A general agency agreement is not a maritime contract. *P. D. Marchessini & Co.* v. *Pacific Marine Corp.*, 227 F. Supp. 17, 18 (S.D.N.Y. 1964). *See also Admiral Oriental Line* v. *United States*, 86 F.2d 201 (2d Cir. 1936). As a general rule, federal law governs admiralty claims. Nevertheless, an accommodation is proper where local law expands the rights flowing from a breach of a maritime duty, *Kossick* v. *United Fruit Co.*, 365 U.S. 731, 739, 81 S.Ct. 886, 892 (1961). The agent of an underclosed principal is liable for its own acts, *Cleary Bros.* v. *Christie Scow Corp.*, 215 F.2d 740 (2d Cir. 1954), *The Falkefjell* v. *Arnold Bernstein Shipping Co. Inc.*, 223 F.2d 820 (2d Cir. 1955). The undisclosed principal is liable for the acts of its agent performed within the scope of the agency.

Defendant's final argument is that it is not liable for latent defects existing before the demise. The demise charterer is the owner of the barge *pro hac vice* and is liable for personal injuries to seaman, *Aird* v. *Weyerhaeuser S.S. Co., supra* at 610; *Cromwell* v. *Slaney*, 65 F.2d 940, 941 (1st Cir. 1933). The warranty of seaworthiness running from the owner to the charterer gives the charterer a right of indemnity for any loss the charterer sustains by reason of a latent defect existing at the time of the charter.

Connecticut Adamant Plaster Co. v. *James McWilliams Blue Line Inc.*, 149 F. Supp. 122, 126 (S.D.N.Y. 1957), *aff'd*, 253 F.2d 785 (2d Cir. 1958). *The Doyle*, 105 F.2d 113 (3d Cir. 1939), cited by defendants (Trial brief p. 5) is not to the contrary.[3]

Turning to the defendant third-party complaint for indemnity against ITO, I find that the defect in the beams supporting the deck could not be discovered by a reasonable inspection. The stevedore's warranty to perfom the stevedoring services in a workmanlike manner does not obligate him to uncover defects not readily discoverable through a cursory examination. The defect in the support of the deck at the site of the injury was a latent defect. Third-party defendant's motion to dismiss the third-party complaint is granted, *Vaccaro* v. *Alcoa Steamship Company*, 405 F.2d 1133, 1138 (2d Cir. 1968).[4]

The court finds for the plaintiff and against Navigation and Scindia.

The court directs a trial on the issue of damages on February 22, 1977, at 10:00 A. M., and it is

So ordered.

/s/ Jacob Mishler
U.S.D.J.

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[3] The district court's decision is not reported. Nor is it explained in the Court of Appeals' reversal. It is clear, however, that the Court of Appeals recognized the right of duPont (the shipper of the lost cargo) to recover against Sheridan, the charterer of the Lighter Doyle. This court interprets the order of the Court of Appeals relating to impleading, as permitting a claim over for the loss suffered by the charterer against Cox, the owner of the lighter.

[4] Entry of judgment is stayed until the time of entry of judgment in favor of plaintiff.

Opinion on Damages

March 29, 1977

MISHLER, CH. J.

The court found for the plaintiff in a bifurcated non-jury trial (see Memorandum of Decision and Order dated February 16, 1977). The court, having conducted a trial on the issue of damages, finds:

When the plaintiff's right foot abruptly descended through the deck of the barge, his head was thrust violently back striking the side of the barge with such force that it caused a separation of the retina of the right eye. Plaintiff was rendered unconscious for a short period of time. The plunge through the deck inflicted multiple contusions of the right leg and a sprain of the muscles in the right shoulder. He received emergency treatment that night. The next day, upon examination by a general practitioner, he was referred to Dr. Dominick A. Ajello, an ophthalmologist.

Dr. Ajello diagnosed the injury as a retinal separation and referred him to Dr. Frederick Gottlieb, a retinal surgeon. Plaintiff was admitted to Brooklyn Eye and Ear Hospital on March 24, 1969, and Dr. Gottlieb repaired the damage to the retina by performing a scleral buckling. The operation left scar tissue at the site of the injury but restored vision partially to the right eye. Plaintiff was discharged from Brooklyn Eye and Ear Hosp[illegible] on April 2, 1969.

The restoration of partial sight in the right eye created other problems. Since the operation required severing a muscle of the right eye to reach the damaged retina, the

repair of the muscles changed the position of that eye with relation to the left eye. The condition resulted in vertical double vision, i.e. the left eye seeing an object on one plane while the right eye seeing it on another plane. Dr. Ajello undertook to correct the problem by performing a resection and advancement of the muscle involved, i.e. the superior rectus. The operation succeeded in minimizing the problem to the extent that corrective glasses gave plaintiff the capability of seeing objects with a fair degree of clarity, if he looked straight out. The difficulty remained if he looked to the side, above, or below. The plaintiff has good vision in his left eye; if he totally obscures sight from his right eye by a patch or other appliance, he is able to perform his usual daily activities. He is then in the same viewing position as an individual who has completely lost the sight of one eye.

Plaintiff returned to work on April 5, 1971 and worked continuously until August 19, 1974, when he slipped and fell as a result of his foot becoming entangled in a rope as he was leaving a ship. He does not claim that the injuries incurred on August 19, 1974, are causally related to the injury of March 18, 1969.

Plaintiff was born on September 8, 1923. His life expectancy as of this day is 20 years.

Opinion on Damages

Plaintiff suffered loss of services from March 18, 1969, to April 5, 1971:

1969—$7,000	
1970— 5,000	
1971— 2,500	
Total	$ 14,500
Medical expenses:[1]	
Retinal Surgery (Dr. Gottlieb)	$1,200
Resection (Dr. Ajello)	310
Office visits and post-operative treatment	150
Total	1,660
Pain and suffering to date and future pain and suffering for a period of 20 years from this date	100,000

The Clerk is directed to enter judgment in favor of plaintiff and against defendants in the amount of $116,160 together with costs and disbursements.

/s/ JACOB MISHLER
U.S.D.J.

[1] Plaintiff failed to offer any proof as to the reasonable value of the cost of the hospital stays or of Dr. Tagligambe's services.

Amended Judgment

This action having come on for trial on the issue of liability before the Court, the Honorable Jacob Mishler, presiding, and a memorandum and order containing findings of fact and conclusions of law having been filed on February 16, 1977, finding for the plaintiff and against defendants, United States Navigation Inc. and Scindia Steam Navigation Company, Ltd., and granting third-party defendant International Terminal Operating Co., Inc.'s motion to dismiss the third-party complaint and setting the matter down for trial on the issue of damages and such trial having been held and a memorandum and order having been filed on March 29, 1977, directing the Clerk to enter judgment in favor of plaintiff and against defendants United States Navigation Inc. and Scindia Steam Navigation Company, Ltd., in the amount of $116,160 together with costs and disbursements, it is

ORDERED and ADJUDGED that plaintiff recover of defendants United States Navigation Inc. and Scindia Steam Navigation Company, Ltd. in the amount of $116,160 together with costs and disbursements and that the motion of third party defendant International Terminal Operating Co., Inc., to dismiss the third-party complaint is granted.

Dated: Brooklyn, New York
April 7, 1977

/s/ LEWIS ORGEL
Clerk

2 copies received 7/21/77
Federa, Dorfman & Ferrara
By: Ira Brandes, Esq.

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